



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/827,563	04/06/2001	Marion Calmer	P3098	6406

33512 7590 10/19/2004

LAW OFFICE OF JAY R. HAMILTON, PLC
4300 E. 53RD ST.
SUITE 103
DAVENPORT, IA 52807

EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT PAPER NUMBER

3671

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/827,563

Applicant(s)

CALMER, MARION

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-28 is/are pending in the application.
- 4a) Of the above claim(s) 16-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment filed on 7/06/04 fails to comply with the Revised Amendment Practice set forth in 37 CFR 1.121. Examples of the failures include the failure to provide all the claims on separate sheets of paper, the failure to provide the abstract on its own sheet of paper, and the failure to include the necessary status identifiers for every claim ever presented. This list of examples is not exhaustive, and the entire amendment should be reviewed for compliance with the new rules. The amendment has been entered and considered only for the purpose of issuing this office action.
2. Because the amendment fails to include a listing of every claim ever presented, it is unknown whether Applicant intended to cancel or withdraw previously allowed claims 16-24 or intended to represent them as previously presented. Until Applicant clarifies the status of these claims, these claims are considered withdrawn and this office action is based solely on the claims presented, i.e., new claims 27 and 28.

Specification

3. The amendment filed 7/6/04 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the specification provides no support for the claimed angles of curvature.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 27-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As previously stated, the specification, as originally filed, proves no support for claiming a downward angle of curvature of 9 degrees or an upward angle of curvature of five degrees. Nor can these angles be properly inferred from the drawings, since the drawings are not described as being to scale and the drawings themselves are not of sufficient detail to reliably measure angles.

Note: Because of the forgoing objection over the introduction of new matter and the rejection of the claims for failing to comply with the written description requirement, the claimed angles must be removed from the claims. The following art rejection is based upon the objected/rejected to language being removed.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

7. Claims 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,784,869 to Rayfield.

Art Unit: 3671

The Rayfield '869 patent discloses an arrangement of functional elements in a row crop harvester attachment with a mobile threshing unit. The arrangement comprises the following functional elements: A row crop harvester (3) having a main frame attachment mounted to a mobile harvesting unit (1), a first conveyor system (12) in the row crop harvester including a power source connected to a plurality of row units (5) for removing grain from the stalks and conveying the material including the grain up a first inclined plane to exits from the first conveyor system, and a second conveyor system (6) at right angles to the first conveyor system and including a power source. The second conveyor system (an auger having an auger trough) conveys the material from the exits of the first conveyor system to an area at the center of the plurality of conveyor units for exit from the second conveyor system. An open area (11) is connected by an inclined plane between the exit of the second conveying system to the entrance of the mobile threshing unit. A third conveying system (4) includes a power source in the mobile threshing unit for retrieving material and delivering the material to the thresher mechanism. The plate (examiner's ref. D –see attached copies of. Fig. 3 and 4) reduces/minimizes the curvature of the auger trough from the midpoint of the auger trough through the exit of the second conveyor system. The height of the entrance of the third conveyor system is reduced/minimized with respect to the exit of the second conveyor system by adjusting the second conveyor system by slots B.

Response to Arguments

8. Applicant's arguments filed 7/6/04 have been fully considered but they are not persuasive.

Art Unit: 3671

Because of the new matter and written description problems, as detailed above, the claim limitations of the angle of curvature must be removed from the claims. Once these claim limitations are removed, the claims would still be anticipated by the Rayfield patent.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

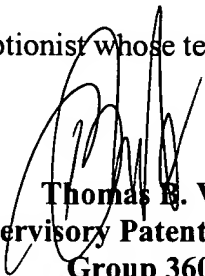
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 872-9306.

Art Unit: 3671

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

NSM
10/07/04

Nathan S. Mammen